

Testimony of  
Michael D. Eisner  
Chairman & CEO  
The Walt Disney Company  
Before the  
Committee on Commerce, Science & Transportation  
United States Senate  
February 28, 2002

---

Thank you Mr. Chairman. I want to thank you, Ranking Member McCain and all of your colleagues for inviting us here to discuss the distribution of creative content over digital Broadband and digital Broadcast distribution systems. For all the reasons that I will share with you today, The Walt Disney Company urges the United States Congress to act to facilitate the establishment of open and common standards for technological protection of creative content in digital distribution.

U.S. produced movies, TV shows and other audiovisual works are part of the creative content industries that lead the U.S. economy in contributions to job growth, Gross Domestic Product and foreign sales and exports. Creative content represents nearly 5% of GDP, generates more than \$450 Billion annually and provides jobs for more than 4 million Americans. In fact, creative works account for a larger percentage of U.S. foreign sales and exports than almost all other sectors of our economy, including automobiles, aircraft and agriculture. By facilitating the establishment of open and common standards for protection of creative content, Congress will be acting to ensure the domestic viability of one of the most important positive contributions to our nation's balance of international trade.

Technological content protection standards also will play an important role in stimulating the deployment of Broadband communications networks, accelerating the digital television transition and re-energizing the sale of many different digital devices, including personal computers. Our nation's build-out of Broadband networks is going too slowly. The sale of computers and other digital media devices has slowed. And, the pace of the digital television transition is a frustration to many including the local broadcasters who have invested Billions of Dollars in new digital transmission facilities.

The availability of high quality motion pictures and television programs on DTV and on Broadband networks will help drive consumer demand. That consumer demand will hasten the deployment of DTV, stimulate the sales of digital media devices and speed the build out of the vital telecommunications infrastructure that will drive our digital economy.

Digital technology and Broadband communications hold the promise of tremendous economic growth for our Nation. At Disney, we have embraced advanced digital technology. We were one of the first major studios to deliver our product digitally to consumers via direct broadcast satellite. We have one of the largest and most

successful digital videodisc businesses. We broadcast digital television every day. We have state-of-the-art digital feature film production studios and were the first to produce and deliver our films completely in the digital realm with major titles such as Dinosaur, Toy Story and Monsters, Inc. Currently we are pioneering the development of digital cinema screens throughout the world. And, we have entered into a joint venture with News Corporation entitled Movies.Com. This new company will establish a direct broadband connection between U.S.- produced motion pictures and U.S. consumers sitting in their own homes. Using advanced digital technology, Movies.Com will enable exciting new choices and options for consumers wishing to access our movies and other creative content.

These Disney investments demonstrate two things. First, our Company has been enthusiastic in its embrace of new technology. Second, the digital revolution holds the promise of great economic growth for our nation and wondrous new services for our citizens. Unfortunately, these same digital technologies can enable a level of piracy – theft - that would undermine our capacity to produce films and entertainment, undermine the deployment of Broadband networks, undermine the digital television transition and ultimately result in fewer choices and options for American consumers.

To be sure, piracy has always been with us. But, digital piracy is different. In the analog world, each successive copy degrades in quality and sharing a copy requires one consumer to physically transfer that copy to another. In digital, each copy is perfect – a perfectly coded series of ones and zeros. The 1,000<sup>th</sup> copy is just as perfect as the original. And, because of the ubiquitous nature of the Internet, perfect, but unauthorized, copies can be transmitted virtually instantaneously all over the world with no regard whatsoever for the rights of the content owners. For a chillingly real depiction of where we are headed, please take a look at this short clip from a recent “Night Line” program in which 15-year-old Benjamin illustrates his ability to take - for free - any motion picture or television program of his choice. [Play Nightline clip]

We know that we can never achieve – and do not expect – 100% content security. But, there must be a reasonably secure environment to prevent widespread and crippling theft of the creative content that drives our economy. As Benjamin clearly demonstrated, today, we are not even close. One research firm, Viant of Boston, estimates that more than 350,000 illegal pirate movies are downloaded from the Internet every day. In fact today, you can go to the Internet and find illegal copies of brand new films like “Harry Potter,” “Lord Of the Rings,” “Monsters, Inc” and “Ocean’s Eleven.” Just in case you have any doubts about picture quality, just take a look at this excerpt from a downloaded pirate copy of the recent film “[Insert Title]”. [Play clip]

There are several key considerations that should be a part of the solution to this pressing problem. First, the interests of consumers, content owners and device manufacturers ALL require that there be common technological standards. Common standards will prevent consumers from confronting a bewildering array of confusing and incompatible standards. Common standards will help create a technologically predictable market to which content owners can bring their movies and other works. And common

standards will make it reasonable to mandate that device manufacturers build the necessary hardware and/or software into their devices.

This does not mean that there will be a single “silver bullet” solution or that all content owners must use the same digital rights management system in the distribution of legitimate content. Rather, what the market needs is some means to ensure interoperability and a common set of “baseline” technologies to help digital media devices identify and reject the illegal, pirated copies.

Second, the technological standards should be open – not limited to the proprietary developments of a single firm. Widely available open standards, licensed at reasonable costs, will prevent the emergence of new “gatekeepers” who could retard the development of new digital services and limit consumer choice in content. A top public policy goal for Broadband should be open standards so that consumers have convenient access to all content from all producers.

Third, the private sector should be given every reasonable opportunity to develop appropriate means of protection and to adopt common open standards for use in a wide variety of delivery devices. Only in the event of private sector failure should government set the standards. But, the pressure of a timeline for eventual government action is critical to yield the desired standards in a reasonable time frame.

Fourth, the standards that we seek must be renewable, upgradeable and extensible without the necessity of time consuming bureaucratic processes in either private sector, or government, standards setting organizations.

Fifth, once standards are set, they must be mandated for inclusion in all digital media devices that handle creative content. This is necessary to ensure a reasonably secure environment and to prevent unfair competition by non-compliant device manufacturers.

Finally, it is critical that the government act now to help achieve appropriate solutions. Disney is very grateful for the efforts of many in the Congress who have tried over the years to “jawbone” the affected industries to negotiate the required technological standards. For example, we thank Chairman Hollings and Ranking Member McCain for scheduling this hearing, which has acted as a healthy spur to discussions in the private sector. Other leading legislators have been helpful as well. Members of both the House and the Senate, Democrats and Republicans have written to the Motion Picture Association, to the Electronics Industries Association, to prominent high tech companies and to the FCC urging swift private sector agreement on technological standards to protect creative content in the digital world. And, we are grateful to Chairman Hollings and Senator Stevens for the Discussion Draft Legislation that they circulated last year. That Discussion Draft contained many innovative suggestions to break the Gordian knot that has frustrated all prior attempts to solve the digital piracy problem.

Of course, any legislative solutions must be vetted by all the appropriate Committees of the Congress. And, legislation will enjoy smoother sailing if it proceeds from agreement among the affected industries, consumer groups and others with a stake in the digital future. Also, given the complexity of the problem, we need to proceed carefully so as to avoid unintended consequences of any legislative intervention. But, the time to solve this problem is running short and prior attempts at jawboning have not produced a solution.

Some high tech companies, like Cisco Systems, have been helpful in the search for solutions and to them we express our gratitude. Unfortunately, other high tech companies have simply lectured us that they have no obligation to help solve what they describe as “our problem.” In fact, at least one high tech executive has described illegal pirate content as a “killer application” that will drive consumer demand for Broadband. Obviously, the development of Broadband networks is an appropriate National goal only if those networks are conduits for legitimate – not pirate – content.

I would like to respond briefly to some of the arguments that have been raised against efforts to deal with this problem. First, some argue that it is unprecedented to have government involvement in the mandating of technological standards. That argument is incorrect. There are numerous precedents for a government role here. For example, the Audio Home Recording Act of 1992 required that all digital audio recording devices conform to a specific content protection technology, namely, the Serial Copy Management System (SCMS). And, the Digital Millennium Copyright Act of 1998 requires all analog VCRs to include the Macrovision copy control technology. The All-Channel Receiver Act required all television sets sold in this Country to contain both VHF and UHF tuners. Clearly, there is ample precedent for legislation to mandate technical standards.

There is another issue I’d like to clarify. Disney and other content owners are not seeking to stop home taping or eliminate “fair use.” We are not here because we want to hinder libraries and college professors in using portions of creative works for scholarly research. Nor are we here because we want to interfere with consumers who wish to make a home copy of Broadcast and basic cable TV programs for their own personal time-shifted viewing. We are confident that the government can act to facilitate the needed technology standards without endangering home taping or fair use.

Finally, I want to emphasize that Disney has no desire to stifle innovation, development, experimentation and research by our nation’s vibrant high-technology companies. We embrace technology – it is an everyday part of our business. Continued innovation in high tech is necessary for Disney to evolve how we create and distribute our content and to reach consumers in new ways. We are eager to work with the consumer electronics and information technology industries to ensure that the technological standards we seek are NOT an impediment to continued innovation and experimentation.

I thank you again for the opportunity to testify here today and I would be happy to answer any questions that you might have.